STATE OF MICHIGAN

IN THE SUPREME COURT

In Re Complaint of Enbridge Energy, Limited Partnership against Upper Peninsula Power Company,

UPPER PENINSULA POWER COMPANY,

Appellant,

vs.

ENBRIDGE ENERGY, LIMITED PARTNERSHIP,

Appellee,

and MICHIGAN PUBLIC SERVICE COMMISSION,

Defendant-Appellee,

/

Supreme Court No. 153116

Court of Appeals No. 321946

MPSC Case No. U-17077

ANSWER AND BRIEF OF ENBRIDGE ENERGY, LIMITED PARTNERSHIP IN OPPOSITION TO UPPER PENINSULA POWER COMPANY'S APPLICATION FOR LEAVE TO APPEAL

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COUNTER-STATEMENT OF QUESTIONS INVOLVED

I. Whether Upper Peninsula Power Company ("UPPCo") has demonstrated that this Court should grant its *Application for Leave to Appeal* by arguing that the Court of Appeals' published decision below

(a) offers sufficient bases for overturning the Michigan Public Service Commission's ("PSC") decision relying on authority concerning holding parties to their settlement promises to uphold a settlement agreement in 2012 and dismiss Enbridge's formal complaint in this matter, or
(b) permits a collateral attack on a settlement agreement by separate complaint,

such that one of the following grounds enumerated in MCR 7.305(B) is present because

(2) an issue is of significant public interest,[1]
(3) an issue is of major significance to the state's jurisprudence, or
(5)(a) a Court of Appeals decision is clearly erroneous and will cause material injustice.

Plaintiff-Appellee Enbridge answers: No.

Defendant-Appellant UPPCo answers: Yes.

Defendant-Appellee PSC probably answers: Yes.

II. Whether the PSC erred when it dismissed Enbridge Energy, Limited Partnership's ("Enbridge's") complaint asserting that the PSC lacked the authority to allow UPPCO to raise electric rates based on a rate decoupling mechanism ("RDM"), and upheld a settlement agreement approved by the PSC in a prior electric rate case for UPPCo, the upholding of which the Court of Appeals held constituted an ultra vires act because the approval exceeded the statutory authority granted the PSC by the Legislature's "unmistakably clear" language in MCL 460.1097(4).

The Court of Appeals answered: Yes.

Plaintiff-Appellee Enbridge answered: Yes.

Defendant-Appellant UPPCo answered: No.

Defendant-Appellee PSC answered: No.

[1] Enbridge does not contest whether the PSC is a public agency within the meaning of this subrule.

ANSWER AND BRIEF OF ENBRIDGE ENERGY, LIMITED PARTNERSHIP IN OPPOSITION TO MICHIGAN PUBLIC SERVICE COMMISSION'S APPLICATION FOR LEAVE TO APPEAL

Enbridge Energy, Limited Partnership states as follows for its *Answer* and *Brief in Support* in opposition to the *Application for Leave to Appeal of the Upper Peninsula Power Company* (the "*Application*") to this Court the December 22, 2015 decision of the Court of Appeals in the above-captioned matter:

INTRODUCTION

This case involves an effort by an electricity ratepayer, aggrieved by an order of the PSC raising utility rates, to hold the PSC and electric utility UPPCo to the lawful limits of electric ratemaking authority established by the Michigan Legislature in MCL 460.1097(4) pursuant to Public Act 295 of 2008. The Court of Appeals decided this case narrowly, as a matter of straightforward statutory interpretation, giving effect to the intent of the Legislature rather than bending to the will of a limited number of private parties and the settlement agreement they entered before a regulatory agency without authority to approve electric utility rate increases based on the RDM in the settlement.

There are no factual disputes in this case, though Appellant's filing makes lengthy, unsupported assertions regarding facts outside the record established in the case unnecessary to decide it, and speculation about future "sky is falling" factual scenarios regarding litigation settlement incentives which have not yet and may never come to pass.

This Court should deny leave because the narrow holding by the Court of Appeals below is grounded in well-established legal principles expressed by Michigan courts concerning statutory interpretation and their role in reviewing decisions of administrative agencies such as the PSC, and because the UPPCo's *Application* fails to show that one of the mandatory requirements for granting leave has been met. Even if one or more elements in MCR 7.305(B)

were present here, then this Court should deny leave because the Court of Appeals decided this matter correctly based on straightforward interpretation of clear statutory language.

In its published decision in this matter dated December 22, 2015, the Court of Appeals decided a narrow legal issue as a matter of law: that the PSC exceeded the statutory authority granted by the Legislature in "unmistakably clear" language of MCL 460.1097(4) when the PSC approved of an increase by UPPCo in 2012 to electric rates based on an RDM under guise of approving a 2009 settlement agreement from a prior case. The Court of Appeals held that the PSC erred in 2012 when it upheld and implemented the settlement agreement with an RDM from an earlier case and dismissed Enbridge's complaint in this case. The PSC did so despite awareness of the fact that the Court of Appeals had already issued binding, published authority that upheld the plain language-reading of the statute in a matter involving another electric utility which prohibited RDMs for electric utilities. Deciding this issue consistently with its prior binding precedent in *In re Applications of Detroit Edison*, 296 Mich App 101; 817 NW2d 630 (2012) ("*Detroit Edison*"), the Court of Appeals explained that the PSC's authority is limited to that which the Legislature dictates, and quoted the statute as well as its prior legal analysis where it identified the Legislature's authorization for RDM implementation for gas utilities, but not for electric utilities, reasoning that the PSC did not have the authority to implement the RDM for UPPCo, an electric utility, in this case. *In re Complaint of Enbridge Energy, Limited Partnership*, __ Mich App __ (Dec. 22, 2015) slip op at 4 (quoting MCL 460.1097(4), quoting analysis of that statute from *Detroit Edison* at 109-110, and quoting *French v Mitchell*, 377 Mich 364, 34; 140 NW2d 426 (1966)) ("*Enbridge*").

The Court of Appeals also pointed out the PSC's unsuitable reliance on this Court's authority regarding encouraging and holding parties to their settlement agreements where an issue of law in doubt is resolved as between those parties through a compromise. *Enbridge*, slip

op at 5 (providing two reasons that the PSC's reliance on *Dodge v Detroit Trust Co*, 300 Mich 575; 2 NW2d 509 (1942) ("*Dodge*") is inapposite). The Court of Appeals made no express holding about *Dodge*, but merely found it inapposite, declined to find it applicable, and distinguished it from the instant proceeding because of two critical facts. First, unlike the later judicial pronouncement resolving a legal dispute in *Dodge*, the Court of Appeals recognized that here there was no intervening change in the plain language of the statute, and concluded that the statute's "unmistakably clear" language compelled the result that it was not reasonable to believe that the law was in dispute or unclear. *Enbridge*, slip op at 5. Second, unlike the private parties involved in *Dodge*, settlement agreements in regulatory ratemaking proceedings necessarily bind all customers of the utility – even those who do not sign the settlement agreement. *Enbridge* at 5. The Court of Appeals merely explained that this distinction means that the public policy behind the long-standing doctrine that requires binding people to their settlements fails to be served when the persons bound by the settlement agreement do not sign on to the agreement. *Id*. The practicalities and reasons for that reality in the ratemaking context do not make *Dodge* any less valid than it was before December 22, 2015, between private parties who sign settlement agreements, but only means that the Court of Appeals declined to agree with the PSC that *Dodge* applies to the ratemaking context as a basis to validate an otherwise unlawful settlement agreement.

In this appeal, the Court of Appeals was faced with a straightforward choice with dangerous implications for all three branches of Michigan's government. The Court of Appeals chose to stay true to its prime interpretive directive, which is to give effect to the plain language of a statute adopted by the Legislature.

Its other "option" was to give effect to electric rate increases based on: (i) a settlement agreement entered by a limited number of parties; (ii) which purported to bind thousands more

people: (iii) based on approval by an administrative regulatory agency that lacked authority granted to it by the Legislature for such action; and (iv) which would have allowed that agency to use a settlement agreement to leapfrog the legislative process required to expand an administrative agency's authority through a "settlement."

The Court of Appeals chose correctly by deciding the narrow legal issue presented by this case, and declining to authorize ultra vires conduct by an administrative agency. For the reasons set forth below, leave should be denied.

COUNTER-STATEMENT OF FACTS

The Parties

Appellee Enbridge Energy, Limited Partnership is a Delaware limited partnership, with its principal place of business located in Houston, Texas, and is duly authorized to conduct business in the State of Michigan.[2] Enbridge operates interstate pipelines in the United States which are generally regulated by the Pipeline and Hazardous Material Safety Administration and the Federal Energy Regulatory Commission, one of which traverses UPPCo's service territory in the Upper Peninsula of Michigan. In operating the interstate pipeline in the Upper Peninsula, Enbridge also operates and maintains two pumping stations and related facilities in Iron River, Michigan, and in Rapid River, Michigan. These pumping stations are carried as separate billing accounts on UPPCo's billing records. In operating these pumping stations, Enbridge purchases substantial quantities of electricity from UPPCo to operate these two pumping stations on tariffs designated as "Cp-U Primary" for UPPCo's "Integrated System" and "Cp-U Primary" for UPPCo's "Iron River System." These tariffs were approved by the PSC.

Appellant UPPCo, is a public utility, regulated by the PSC and engaged in the generation, purchase, distribution and sale of electric energy to approximately 54,000 retail customers in 18 counties in the Upper Peninsula of Michigan, having its principal offices located in Green Bay, Wisconsin.

Appellee PSC is Michigan's regulatory agency charged with responsibility to regulate public utilities, including electric utilities, and to set lawful, just, and reasonable rates pursuant to authority granted it by the Legislature. Its Staff participates in proceedings before the PSC. The

[2] The descriptions of Enbridge and UPPCo found here, with updates regarding the number of customers served by UPPCo and the additional general federal regulatory agency regulating Enbridge, were presented in Enbridge's Motion for Summary Disposition in the instant proceeding, PSC Case No. U-17077, Doc. No. 12.

PSC is an Appellant in companion appeal given Supreme Court No. 153118, also arising from the proceedings giving rise to the instant appeal.

The Dispute

The facts in this matter are not in dispute, but they are somewhat complicated because there are three separate PSC dockets involved.

The First PSC Docket: U-15988

The first PSC docket, U-15988, approved a pilot revenue decoupling mechanism ("RDM"),[3] but did not approve any rate increases or decreases. The second docket, U-16568, approved rate increases, but Enbridge was not allowed to contest those increases it was required to pay pursuant to an illegal RDM. The third docket, U-17077, which gave rise to the instant appeal, is a complaint brought by Enbridge against UPPCo which the PSC dismissed and which action Enbridge appealed.

On December 16, 2009, the PSC entered an Order Approving Settlement Agreement in *In the Matter of the Application of Upper Peninsula Power Company for Authority to Increase Retail Electric Rates*, PSC Case No. U-15988 (the "December 2009 Order," or the "Settlement Agreement").[4] That Settlement Agreement established a pilot RDM for UPPCo and was approved by the PSC, without intervention or objection, and allowed the annual filing by UPPCo of the accounting reconciliation procedure beginning January 1, 2010, but did not authorize any

[3] An RDM is an accounting mechanism intended to protect utilities from revenue losses due to energy efficiency, and to lessen the "throughput disincentive" for utility investment in energy efficiency. *See* Decoupling for Electric & Gas Utilities: Frequently Asked Questions (FAQ), National Association of Regulatory Utility Commissioners, p. 2 (Sept. 2007). http://nlquery.epa.gov/epasearch/epasearch?querytext=decoupling+for+electric+and+gas+utilities+faq+naruc&fld=&areaname=&typeofsearch=epa&areacontacts=comments.htm&areasearchurl=&result_template=epafiles_default.xsl&filter=sample4filt.hts&x=0&y=0
Last accessed Feb. 19, 2016.

[4] *In the Matter of the Application of Upper Peninsula Power Company for Authority to Increase Retail Electric Rates*, PSC Case No. U-15988, Doc. No. 66 at 9.

increase on electrical rates charged by UPPCo to Enbridge. Enbridge was not a party to that proceeding or the Settlement Agreement.

The Detroit Edison Decision

On April 10, 2012, in an unrelated matter, *In re Applications of Detroit Edison*, the Michigan Court of Appeals held:

> . . . that the PSC exceeded its statutorily granted authority when it authorized Detroit Edison to adopt an RDM.
>
> For purposes of this appeal, appellants do not dispute the policy objectives or expected consequences of Detroit Edison's adoption of an RDM, nor is it the judiciary's province to examine them. Rather, appellants correctly take issue with the PSC's authority to authorize the RDM in the first instance. Appellants point to the obvious differences in statutes addressing the use of RDMs for gas and electric utilities and reason, correctly in our view, that those differences mean that the PSC has authority to direct or approve the use of RDMs only in connection with gas utilities, not electric.[5]
>
> * * * *
>
> It is our judgment that a plain reading of MCL 460.1097(4) does not empower the PSC to approve or direct the use of an RDM for electric providers. If the Michigan Legislature had wanted to do so, it is plain from the language applicable to gas utilities in MCL 460.1089(6) that it could and would have made its intention clear.[6]

These provisions of MCL 460.1097 and 460.1089 were adopted in Public Act 295 of 2008, and have not been amended since the Act became effective October 6, 2008.

The Second PSC Docket: U-16568

In its April 25, 2012 exceptions to the proposal for decision in Case No. U-16568, the PSC Staff notified the PSC of the *Detroit Edison* decision and its binding nature on the PSC, stating:

> Since the ALJ issued the PFD in this case, the Court of Appeals reversed the Commission's Order in U-15768 approving Detroit

[5] 296 Mich App 101, 108; 817 NW2d 630 (2012).
[6] *Id* at 110.

> Edison's RDM. *In re Application of Detroit Edison Co to Increase Rates*, ___ Mich ___; ___ NW2d ___ (2012), 2012 WL 1192123. The Court found that the Commission lacked authority to approve a RDM for electric providers: "It is our judgment that a plain reading of the above-quoted statutes does not empower the PSC to approve or direct the use of an RDM for electric providers." Id. at 5.
>
> The Court released its opinion for publication, so it is binding under the rule of stare decisis. MCR 7.215(C)(2).[7]

On August 14, 2012, the PSC issued the August 2012 Order in Case U-16568 (the "August 2012 Order").[8] The August 2012 Order authorized UPPCo to collect a revenue shortfall of $1,723,294 related to the reconciliation of UPPCo's RDM for calendar year 2010. The August 2012 Order authorized surcharges on both Cp-U Primary rates paid by Enbridge of $0.00258/kWh for an unspecified period. On a monthly basis, a surcharge of $0.00258/kWh increased Enbridge's bills for its two accounts by approximately $5,900 per month. The August 2012 Order was the first Order of the PSC that authorized UPPCo to increase electrical rates charged to Enbridge via an RDM.

On August 20, 2012, Enbridge filed a Petition for Rehearing, or in the Alternative a Formal Complaint, of the August 2012 Order in Case U-16568. On September 25, 2012, the PSC denied the Petition for rehearing portion of Enbridge's filing and ignored the alternative Formal Complaint. The PSC denied the Petition for Rehearing portion of Enbridge's filing because "Enbridge is not a party to this proceeding. The petition for rehearing is denied."[9]

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[7] *In the Matter of the Application of Upper Peninsula Power Company for Authority to Reconcile its Revenue Decoupling Mechanism for the 2010 Calendar Year*, PSC Case No. U-16568, Doc. No. 30, Michigan Public Service Commission Staffs Exceptions to the Proposal for Decision at 1-2, April 25, 2012.

[8] *Id*, Doc. No. 36, Order, August 14, 2012.

[9] PSC Case No. U-16568, Order, Sept 25, 2012 at 3.

The Third PSC Docket: U-17077

Seeing no action on the Formal Complaint portion of its August 20, 2012 filing, on October 23, 2012, Enbridge refiled its Formal Complaint.[10] On December 11, 2012, the PSC Staff filed their Answer, Motion for Summary Disposition, and Brief in Support.[11]

On December 12, 2012, Enbridge filed its Motion for Summary Disposition on the allegations of its Formal Complaint before the PSC, asking that the PSC grant summary disposition in Enbridge's favor.[12] Since there were no factual disputes, Enbridge asked the PSC to find that as a matter of law, pursuant to MCL 2.119(C)(10) and the PSC's Rules 323 and 335, that the rates approved by the PSC in the August 2012 Order were unjust, unreasonable, and unlawful.[13] After UPPCo filed a Response, Enbridge's Motion was heard before an Administrative Law Judge on December 18, 2012, the same day the PSC Staff's Motion for Summary Disposition was heard.[14]

On February 18, 2014, the ALJ issued a Proposal for Decision (the "PFD").[15] On March 7, 2014, Enbridge filed Exceptions to the PFD (the "Exceptions"). In the Exceptions, Enbridge argued that the ALJ erred in finding that the PSC had subject-matter jurisdiction to approve the RDM on the basis (i) that the ALJ ignored the unambiguous Court of Appeals holding in *Detroit Edison*, which carved out no special exceptions for pre-existing settlement agreements, but instead prohibited the PSC from approving or directing "the use of an RDM for electric providers," and (ii) of Michigan Supreme Court authority expressing the black-letter law

[10] PSC Case No. U-17077, Doc. No. 1.
[11] *Id*, Doc. No. 10.
[12] Enbridge's Motion for Summary Disposition, PSC Case No. U-17077, Doc. No. 12.
[13] Brief in Support of Enbridge's Motion for Summary Disposition, PSC Case No. U-17077, Doc. No. 12 at 4.
[14] MPSC Case No. U-17077: PSC's Motion for Summary Disposition and Brief in Support, December 11, 2012, Doc. Nos. 8; and Transcript, Vol. 1, Prehearing and Motion, December 18, 2012, Doc. No. 14.
[15] PSC Case No. U-17077, Doc. No. 16.

principle that "[s]ubject-matter jurisdiction cannot be gained by consent."[16] For the same reasons, Enbridge also argued that the ALJ erred in not granting Enbridge's Motion for Summary Disposition.[17]

Neither the PSC Staff nor UPPCo filed exceptions to the PFD, but each filed a Reply to the Exceptions filed by Enbridge.[18]

On May 13, 2014, the PSC entered the Order presently on appeal (the "May Order").[19] The PSC found that Enbridge's Complaint complied with Rule 501, and found moot UPPCo's and the PSC Staff's arguments that Enbridge failed to timely intervene or appeal the Orders in Case No. U-16568.[20] The PSC then denied Enbridge's Motion and granted the PSC Staff's Motion, "finding that pursuant to Rule 323, Enbridge failed to state a claim for which relief can be granted."[21] The PSC disagreed with Enbridge's position that the PSC "conferred jurisdiction upon itself to approve the illegal settlement agreement."[22] Relying on MCL 460.6 and *Dodge*, *supra*, the PSC stated that it "finds it has jurisdiction to approve the parties' settlement agreement, thus binding the parties to their compromise, and the Court of Appeals' decision may not upset the parties' agreement."[23] The PSC also found *Detroit Edison* distinguishable from the instant matter, finding that the PSC did not "approve or direct" the use of the RDM in the August 2012 Order, but merely "approved a settlement agreement between the parties, who agreed amongst one another that . . . UPPCo could establish an electric RDM." The PSC found that *In*

[16] Exceptions at 13-16.
[17] *Id* at 13-14.
[18] PSC Case No. U-17077, Doc. Nos. 20 and 21.
[19] PSC Case No. U-17077, Doc. No. 22.
[20] May Order at 10.
[21] *Id* at 10.
[22] *Id* at 11.
[23] *Id* at 11.

re Detroit Edison "[did] not invalidate the settlement agreement between the parties."[24] The PSC denied Enbridge's Motion for Summary Disposition and dismissed its Complaint with prejudice.[25]

Appellate Proceedings

On May 27, 2014, Enbridge timely filed its Claim of Appeal by right with the Court of Appeals pursuant to MCL 426.26.[26]

Neither the PSC Staff nor UPPCo cross-appealed any portion of the PSC's May Order, including the portions where the PSC determined that Enbridge's Complaint complied with PSC Rule 501 and found moot UPPCo's and the PSC Staff's arguments that Enbridge failed to timely intervene or appeal the Orders in Case No. U-16568.

Following briefing, the Court of Appeals heard this matter on October 6, 2015.

On December 22, 2015, the Court of Appeals issued its decision in favor of Enbridge, overturning the PSC's upholding of the Settlement Agreement and dismissal of Enbridge's Formal Complaint by way of a published opinion with a single holding:

> We hold that the PSC erred when it upheld the settlement agreement in the prior case and dismissed Enbridge's compliant in the instant case.[27]

The Court of Appeals did not accept Enbridge's argument that the PSC exceeded its subject-matter jurisdiction when it approved the Settlement Agreement containing an RDM, suggesting that Enbridge's argument conflated the concept of subject-matter jurisdiction with statutory authority, but ultimately held in favor of Enbridge.[28]

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[24] May Order at 12.
[25] *Id* at 12.
[26] PSC Case No. U-17077, Doc. No. 23.
[27] *Enbridge*, __ Mich App __ (2015), slip op at 4.
[28] *Id*, slip op at 3.

The Court of Appeals explained the basis for its holding by quoting the statute adopted by the Legislature that speaks to PSC action related to rate decoupling for electric utilities, and recounting the analysis that supported the *Detroit Edison* decision:

> The statute in question governing RDMs for electric utilities is MCL 460.1097(4), which provides as follows:
>
> > Not later than 1 year after the effective date of this act, the commission shall submit a report on the potential rate impacts on all classes of customers if the electric providers whose rates are regulated by the commission decouple rates. The report shall be submitted to the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues. The commission's report shall review whether decoupling would be costeffective and would reduce the overall consumption of fossil fuels in this state.
>
> As we have explained in *Detroit Edison*, this "provision mandates research and reporting on how RDMs would operate in connection with providers of electricity, *but does not call for or authorize actual implementation of an RDM by those utilities.*" *Detroit Edison*, 296 Mich App at 109 (emphasis altered from original). As the *Detroit Edison* Court noted, this provision for electric utilities is in stark contrast to MCL 460.1089(6), which expressly allows the PSC to approve RDMs for *gas* utilities. *Id.* at 110; see also *French v Mitchell*, 377 Mich 364, 384; 140 NW2d 426 (1966) ("[W]hen the legislature has used certain language in one instance and different language in another, the indication is that different results were intended."). Thus, there is no question that the PSC did not have the authority to implement the RDM for UPPC, an electric utility, in the instant case.[29]

The Court of Appeals also explained the distinctions that led it to conclude that the PSC's reliance on *Dodge* was misplaced. Before doing so, the Court of Appeals described that the parties to the settlement agreement in *Dodge* were involved in a will contest that resolved a disputed legal issue that one party to the settlement tried to challenge after 17 years because of

[29] *Enbridge*, slip op at 4.

an intervening change in the law, and stated that the Supreme Court in *Dodge* "noted that there was no lawful basis to allow a party to invalidate a settlement where there was 'an honest dispute between competent legal minds' regarding the status of the law at the time of the settlement,"[30] and quoted the following passage:

> Where a *doubt as to what the law is* has been settled by a compromise, a subsequent judicial decision by the highest court of a jurisdiction upholding the view adhered to by one of the parties affords no basis for a suit by him to upset the compromise. [*Id.* (emphasis added).][31]

The Court of Appeals offered its explanation of the distinctions between the undisputed facts in this matter and those in *Dodge* as the two primary reasons for the PSC's misplaced reliance on *Dodge*: First, there was no intervening change in the law in the instant case, since in MCL 460.1097(4) has not been changed since its adoption by the Legislature in 2008. The Court of Appeals stated that "the unmistakably clear language of the act compels us to conclude that it was not reasonable to believe that the law was in dispute or otherwise unclear" with respect to the fact that the PSC was prohibited from approving RDMs for electric utilities, unlike for gas utilities.[32] Second, the Court of Appeals highlighted the fact that *Dodge* involved only a limited number of private parties who only themselves were bound by the settlement agreement, but in the instant case it is undisputed that "settlements in the regulatory context carry the force of law and necessarily bind *all* customers in the affected area, even those who were not a party to the settlement."[33] The Court referenced authority from the Indiana Court of Appeals which explains that that such a settlement loses its status as a private contract and becomes more akin to an order of the commission, concluding that

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[30] *Enbridge*, slip op at 4.
[31] *Id*, slip op at 5 (emphasis and bracketed text added by Court of Appeals).
[32] *Id*, slip op at 5.
[33] *Id*, slip op at 5.

> As a result, the strong public policy in behind the long-standing doctrine that requires people to be bound by their settlements, simply is not advanced when such a 'settlement' affects countless others that were not a party to the agreement.[34]

The Court of Appeals summarized its decision as follows:

> In sum, the PSC exceeded its clear statutory authority when it approved the RDM in Case No. U-16568. The fact that the approval was accomplished in the context of a settlement does not transform the PSC's ultra vires act into a legal one. See, e.g., *Timney v Lin*, 106 Cal App 4th 1121, 1127; 131 Cal Rptr 2d 387 (Cal App, 2003) (stating that a strong public policy favoring settlement does not legitimize a settlement agreement clause that is contrary to law). We stress that our holding is based on the fact that reasonable minds could not have disputed the extent of the PSC's authority at the time it approved the settlement.[35]

On February 2, 2016, UPPCo sought leave to appeal this decision by filing its *Application*.

[34] *Enbridge*, slip op at 5 (citations omitted).

[35] *Id*, slip op at 5. In its *Application* at p. v n2, UPPCo asserts that the Court of Appeals made a mistake in the first sentence of this cited passage. To the contrary, close reading of the Court of Appeals's decision, its holding, (*Enbridge*, p. 4), and this quoted concluding passage show that the Court of Appeals found error with the PSC's action in 2012 in U-16568 when it raised electric rates and upheld the RDM from the 2009 settlement agreement, and further erred by dismissing Enbridge's formal complaint. The Court of Appeals made no mistake in the language quoted here.

LAW AND ARGUMENT

As an initial matter, Rule 7.305(B) of the Michigan Court Rules provides that an application for leave to appeal to this Court must show that at least one of the enumerated grounds exists.

Ultimately, UPPCo's application for leave presents a single, narrow legal issue: (1) whether the PSC exceeded the legal authority granted to it by the Legislature in the "unmistakably clear" language of MCL 460.1097(4) when it renewed its seal of approval on the 2009 Settlement Agreement including an RDM and in 2012 authorized UPPCo to increase electric rates charged to Enbridge through the RDM. The resolution of this issue in favor of Enbridge and against the PSC and UPPCo means, accordingly, that the PSC erred when it dismissed Enbridge's Formal Complaint in the present proceeding.

When the appropriate standards of review are applied to both UPPCo's application as a whole and the specific holding of the Court of Appeals, it is clear that UPPCo's *Application* should be denied, even if one or more of the mandatory requirements in MCR 7.305(B) for an application for leave are present, because the Court of Appeals decided this matter correctly.

I. Standard of Review.

Pursuant to MCL 462.25, all rates, fares, charges, classification and joint rates, regulations, practices, and services prescribed by the PSC are presumed, *prima facie*, to be lawful and reasonable.[36] A party, such as Enbridge, aggrieved by an order of the PSC, has the burden of proving by clear and satisfactory evidence that the order is unlawful or unreasonable.[37]

[36] *Michigan Con Gas Co v Pub Serv Comm*, 389 Mich 624, 635-636; 209 NW2d 210 (1973).
[37] MCL 462.26(8).

To establish that a PSC order is unlawful, the appellant must show that the PSC failed to follow a mandatory statute or abused its discretion in the exercise of its judgment.[38]

A PSC order is considered unlawful if it is based on an erroneous interpretation or application of the law, and is considered unreasonable if the evidence does not support it.[39] In reviewing PSC decisions, a court may not substitute its judgment for that of the agency, but may not abandon or delegate its duty to interpret statutory language and legislative intent.[40]

Questions of statutory interpretation are questions of law, which are reviewed *de novo*.[41] If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent.[42]

An agency's interpretation of its enabling statutes is entitled to respectful consideration and, if persuasive, will not be overruled without cogent reasons. However, an agency's interpretation cannot conflict with the plain meaning of the statute. Although a court must consider an agency's interpretation, the court's ultimate concern is the proper construction of the plain language of the statute such that an agency's interpretation is not binding on the court.[43]

This Court should adopt the same approach reviewing agency decisions as followed by the United States Supreme Court. It held:

> An agency's action must be upheld, if at all, on the basis articulated by the agency itself.[44]

In the same case, the United States Supreme Court also held as follows:

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[38] *In re MCI Telecom Complaint*, 460 Mich 396, 427; 596 NW2d 164 (1999).
[39] *Associated Truck Lines, Inc v Pub Serv Comm*, 377 Mich 259; 140 NW2d 515 (1966); *See, also Attorney General v Pub Serv Comm*, 249 Mich App 424, 429; 642 NW2d 691 (2002).
[40] *Attorney General v Pub Serv Comm*, 244 Mich App 401, 406; 625 NW2d 786 (2002).
[41] *In re MCI Telecom Complaint, supra,* at 413; see also *Attorney General v Pub Serv Comm*, 247 Mich App 35, 39; 634 NW2d 710 (2001)
[42] *Tryc v Michigan Veterans Facility*, 451 Mich 129; 545 NW2d 642 (1996).
[43] *In re Complaint of Rovas against SBC Michigan*, 482 Mich 90, 108; 754 NW2d 259 (2008).
[44] *Motor Vehicles Mfrs Ass'n v State Farm Mut Auto Ins Co*, 463 US 29, 50,77; 103 S Ct 2856, L Ed 2d 443 (1983) (citations omitted).

> We have frequently reiterated that an agency must cogently explain why it has exercised its discretion in a given manner . . .[45]

These same principles should be followed by this Court when reviewing the May Order issued by the PSC, and the decision by the Court of Appeals to overturn the May Order.

An application for leave to appeal to this Court must show that one of the grounds enumerated in MCR 7.305(B) is present.

II. The Court of Appeals Correctly Held that the PSC Exceeded its Statutory Authority by Approving and Upholding the Settlement Agreement that Included an RDM to Raise Electric Rates.

The Court of Appeals ruled that the PSC violated MCL 460.1097(4) when it approved the use of the RDM for electric utility UPPCo to raise electric rates in August 2012 with full knowledge of the Michigan Court of Appeals decision in April 2012 that held that a plain reading of that statute forbade the PSC from approving the RDM. Enbridge agrees.

The PSC is a creature of statute and has only those specific powers conferred upon it by the Legislature, and therefore, the PSC acted outside of its authority when it approved the RDM without a specific statutory grant of authority.

By approving the use of the RDM on the basis of the settlement agreement between private parties, the PSC unlawfully exceeded its authority granted by the Legislature. The PSC further erred when it denied Enbridge's Motion for Summary Disposition, as the surcharges established in the RDM are also then necessarily, by extension, unlawful, and should be refunded to customers. Leave should be denied.

A. The Legislature Did Not Authorize the PSC to Approve Electric Rate Increases by RDM.

The Michigan Supreme Court has ruled that the PSC possesses no common law powers, and that the PSC possesses only that authority bestowed upon it by statute.[46] The Supreme Court

[45] *Motor Vehicles Mfrs Ass'n*, 463 US at 48 (citations omitted).

also ruled that the power and authority to be exercised must be conferred by clear and unmistakable language since a doubtful power does not exist.[47] The plain language in a statute prevails over any interpretation given to it by the PSC.[48]

Beginning with the August 2012 Order, the PSC has skirted the issue of whether it "approved or directed" the use of an RDM for electric providers and its inconsistency on this issue reveals the weakness of the PSC's legal position. In one breath, the PSC expressly acknowledged that "[i]n light of the Court of Appeals' Opinion, the Commission appreciates that it cannot approve UPPCo's RDM,"[49] while in almost the next breath it stated that UPPCo's "application for authority to reconcile its revenue decoupling mechanism for calendar year 2010 is ***approved***."[50] The PSC did so with full knowledge of the binding nature of the *Detroit Edison* decision, and had been on notice of the same since April 24, 2012, when the PSC Staff filed their exceptions to the PFD in that matter.

In *Detroit Edison*, the Michigan Court of Appeals in April 2012 laid to rest any question regarding the PSC's authority with respect to approval of electric RDMs when it held that "a plain reading of MCL 460.1097(4) does not empower the PSC to approve or direct the use of an RDM for electric providers."[51] This authority applies to all electric providers; UPPCo is clearly one. Importantly, the Court of Appeals' interpretation was not qualified to carve out an exception for private party settlement agreements. As such, the PSC knew it had no express authority to approve any RDM for any electric provider, including UPPCo, when it nevertheless attempted to resurrect the electric RDM in August 2012 under guise of a settlement agreement.

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[46] *Union Carbide Corp v Pub Serv Comm*, 431 Mich 135, 146; 428 NW2d 322 (1988).
[47] *Id* at 151; accord, *Consumers Power Co v Pub Serv Comm*, 460 Mich 148, 155-159; 596 NW2d 126 (1999).
[48] *Id* at 157 n8.
[49] August 2012 Order at 4.
[50] *Id.* at 5 (emphasis added).
[51] *In re Detroit Edison* at 110.

By approving the RDM in the August 2012 Order under the guise of approving a settlement agreement, the PSC also attempted to regulate indirectly what it cannot regulate directly, which, as an administrative body, the PSC is prohibited from doing.[52] Moreover, it is a well-established rule of statutory construction that where, as with the PSC, powers are specifically conferred they cannot be extended by inference, but that the inference is that it was intended by the Legislature that no other or greater power was given than that specified.[53]

UPPCo implied before the PSC that the Court of Appeals decision only invalidated Detroit Edison's RDM and that other RDMs are lawful. However, the Court of Appeals decision applies to all RDMs for electric utilities. The Court first analyzed MCL 460.1089(6), and next analyzed MCL 460.1097(4), and concluded as follows:

> This latter provision mandates *research and reporting on how RDMs would operate in connection with providers of electricity*, but does not call for or authorize actual implementation of an RDM by such a utility. At issue, therefore, is whether the PSC is empowered to approve or direct the use of an RDM without specific statutory authorization. We read the statutes to answer this question in the negative.[54]

In addition, on November 20, 2012, after Enbridge filed the instant complaint, the Michigan Court of Appeals also rejected the use of an RDM for Consumers Energy Company stating, in an unpublished opinion:

> The Attorney General's and ABATE's objections to the PSC's approval of a rate decoupling mechanism (RDM) for Consumers Energy have been vindicated by recent case law. In *In re*

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[52] See *Blue Cross & Blue Shield of Michigan v Ins Comm'r*, 403 Mich 399, 431-432; 270 NW2d 845 (1978) ("[T]he Commissioner's regulatory authority comes solely from the Legislature. We are not at liberty to enlarge that authority or to permit the Commissioner to regulate indirectly matters which he cannot regulate directly."), citing *Taylor v Public Utilities Comm*, 217 Mich 400; 186 NW 485 (1922), *G F Redmond & Co v Securities Comm*, 221 Mich 1; 192 NW 688 (1923), *Sparta Foundry Co v Public Utilities Comm*, 275 Mich 562; 267 NW 736 (1936), and 2 Cooper, State Administrative Law, pp 691-697.

[53] See *Eikhoff v Charter Comm of the City of Detroit*, 176 Mich 535, 540; 142 NW 746 (1913).

[54] *In re Detroit Edison* at 109 (emphasis in the original).

> *Applications of Detroit Edison*, 296 Mich App at 110, this Court concluded that a plain reading of MCL 460.1089(6) (directing the PSC to authorize certain providers of natural gas "to implement a symmetrical revenue decoupling true-up mechanism that adjusts for sales volumes that are above or below the projected levels that were used to determine the revenue requirement authorized in the natural gas provider's most recent rate case") and MCL 460.1097(4) (directing the PSC to "report on the potential rate impacts on all classes of customers if the electric providers whose rates are regulated by the commission decouple rates"), ***leaves the PSC without authority "to approve or direct the use of an RDM for electric providers."***[55]

Accordingly, the PSC has no statutory authority to approve or direct the use of any RDM for any electric utility. Further, the fact that there were interveners in U-15988 who approved when the settlement agreement was reached and the pilot RDM was approved does not negate the fact that the approval of UPPCo's RDM to raise rates in 2012 was contrary to law and that the PSC did not have the jurisdiction or authority to approve it. The PSC did not, as a matter of law, need assistance from the Court of Appeals to interpret the plain language of the statute to reach that conclusion. As the Court of Appeals explained in this case, "the unmistakably clear language of the act [295 of 2008] compels us to conclude that it was not reasonable to believe that the law was in dispute or otherwise unclear,"[56] negating the PSC's claim that the statute was unclear.

Moreover, the PSC has, in at least one other matter involving an RDM with an electric provider, recognized that the Court of Appeals holding in *Detroit Edison* prevents the PSC from passing on an RDM for an electric provider, and did so *sua sponte*, dismissing an application and stating:

> While this matter was pending before the Commission, the Court of Appeals issued its opinion in *In re Detroit Edison Co*

[55] *In re Consumers Energy Co*, unpublished opinion *per curium* of the Court of Appeals, issued November 20, 2012 at *13 (Docket Nos. 301318 and 301381) (emphasis added).
[56] *Enbridge*, slip op at 5.

> *Applications*, 296 Mich App 101; 817 NW2d 630 (2012), in which it held that the Commission lacks authority to approve or direct the use of an RDM for an electric utility. In light of the Court's determination, the Commission finds that Consumers' application for authority to reconcile revenues pursuant to the RDM approved in the November 2, 2009 order in Case No. U-15645 should be dismissed.[57]

The PSC's failure to do so in Enbridge's case, while having recognized the lack of authority on RDMs for electric providers in other matters, only underscores the error here by the PSC.

B. The Facts in *Dodge* and *Larson* are Distinguishable.

Enbridge agrees with the Court of Appeals that the PSC's reliance on language in *Dodge v Detroit Trust Co*, 300 Mich 575, 614 (1942), to support its action approving UPPCo's RDM to increase electricity rates charged to Enbridge is inappropriate.

The PSC relied on the *Dodge* holding that "a subsequent judicial decision by the highest court of the jurisdiction upholding the view adhered to by **one of the parties** affords no basis for a suit **by him** to upset the compromise,"[58] to reach the conclusion that the PSC had jurisdiction to approve "**the parties**' settlement agreement, thus binding **the parties** to their compromise."[59] This holding in *Dodge* is distinguishable on both factual and legal grounds from the present proceeding, and is thus inapplicable, because (i) Enbridge was not a party to the settlement involving the RDM that the PSC approved in the August 2012 Order that first fixed the rate surcharges which aggrieved Enbridge, and cannot thereby fairly be said to have been bound by that settlement agreement, and (ii) the issue of whether the PSC had subject-matter jurisdiction to

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[57] *In the Matter of the Application of Consumers Energy Company for Authority to Reconcile Electric Revenue for the December 2010 through November 2011 Period Pursuant to Pilot Revenue Decoupling Mechanism and for Other Relief*, MPSC Case No. U-16988, Order issued October 31, 2012. It should be noted that though two parties had filed Petitions to Intervene addressing the Court of Appeals Order, the PSC dismissed the Application without hearing even though the electric utility had specifically filed a letter noting that it would be commenting in other proceedings.

[58] May Order at 11, quoting *Dodge* at 614, emphasis added.

[59] *Id.* at 11, emphasis added.

approve of an RDM for an electric provider has never been litigated in a contested proceeding between UPPCo and Enbridge before this proceeding, U-17077.

The *Dodge* matter involved an attack on the settlement of a will contest by a party to that same settlement seventeen (17) years after the will contest was resolved by the settlement and approved by a court.[60] In the settlement, the *Dodge* plaintiff received consideration of over $1.6 million, plus interest, from an estate valued at over $20 million. The plaintiff later claimed the settlement was void *ab initio* because the inclusion of a single $40,000 parcel of real estate which was dealt with unlawfully.[61] In finding against the plaintiff, the *Dodge* court relied upon principles of *res judicata* as annunciated by the United States Supreme Court, including that *res judicata* applies "to the jurisdiction of the subject matter of as of the parties."[62] The decision in *Stoll v Gottlieb*, 305 US 165, 172; 59 S Ct 134, 138 (1938), upon which the *Dodge* court relied, reasoned that, absent fraud, *res judicata* should apply where two parties have engaged in an actual contest over jurisdiction, and the trial court determined that it had jurisdiction of the subject matter of the litigation.[63]

Dodge does not support UPPCo or the PSC's position in this case. Unlike the plaintiff in *Dodge*, who was party to the will contest and settlement agreement, receiving substantial consideration to settle, Enbridge was not a party to PSC case U-15988 or any related settlement, and received no consideration in the settlement of those matters, making *Dodge* distinguishable on its facts and vitiating any suggestion that (i) a preclusion doctrine, or a charge of re-litigation of the reasonableness or lawfulness of the UPPCo RDM, could apply to Enbridge, or (ii) that Enbridge should be bound to a compromise made by third parties. The third parties consisted of

[60] *Dodge* at 592.
[61] *Id* at 583, 593-594.
[62] *Id* at 610, quoting *Treinies v Sunshine Mining Co*, 308 US 66, 89; 60 Sup Ct 44; 84 L Ed 84 (1939), and citing *Stoll v Gottlieb*, 305 US 165, 172; 59 Sup. Ct. 134; 83 L Ed 104 (1938).
[63] *Stoll* at 172.

the PSC Staff, which had no financial stake in the settlement, UPPCo, which stood to collect $1.7 million from its customers under the settlement and the RDM, and three other companies. Enbridge, on the other hand, was required to pay its share of the $1.7 million rate increases to UPPCo.

The present proceeding is the first in which both Enbridge and UPPCo have had opportunity to litigate and contest the issue of whether the PSC has authority to approve or direct an RDM for UPPCo that raises electricity rates for Enbridge. Under Michigan law, because ratemaking is a legislative function, rather than a judicial one, the judicial preclusion doctrines of *res judicata* and collateral estoppel "cannot apply in the pure sense" to administrative ratemaking determinations by the PSC.[64] Neither of those doctrines could apply in the present proceeding, because each doctrine requires the same parties or their privies to be involved in both an earlier and later matter, which is simply not the case here.[65] As such, this is not a collateral attack, since

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[64] *Res judicata* and collateral estoppel "cannot not apply in the pure sense," since ratemaking is a legislative function, rather than a judicial one. *Pennwalt Corp v Pub Serv Comm*, 166 Mich App 1, 9; 420 NW2d 156 (1988). Factual issues fully decided in earlier PSC proceedings need not be 'completely relitigated' in later proceedings absent new evidence or changed conditions, though no such restriction applies to legal issues. *In re Application of Consumers Energy Company for Rate Increase*, 291 Mich App 106, 122-123; 803 NW2d 574 (2010).

[65] Though not applicable to PSC ratemaking, the contours of the preclusive doctrines of *res judicata* and collateral estoppel were summarized in the matter of *In re Application of Consumers Energy Company for Rate Increase*, 291 Mich App at 121-122:

> Under the doctrine of ***res judicata***, a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. The doctrine operates where the earlier and subsequent actions involve the same parties or their privies, the matters of dispute could or should have been resolved in the earlier adjudication, and the earlier controversy was decided on its merits.
>
> The doctrine applies to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have

rates set by the PSC must always be just and reasonable, and Enbridge's complaint in the present proceeding is just an example of a complaint concerning the justness and reasonableness of rates involving an unlawful RDM. Furthermore, *Dodge* offers no support to the PSC regarding issue preclusion, because the *Stoll* decision, upon which *Dodge* relied with respect to the applicability of *res judicata* to subject-matter jurisdiction, required an "actual contest over jurisdiction between the parties" before *res judicata* could apply as to subject-matter jurisdiction.[66]

Finally, rates fixed by the PSC are always subject to revision.[67] The PSC's determination of reasonableness and lawfulness of the increases rates charged to Enbridge in the UPPCo RDM are subject to revision like any other rates fixed by the PSC. The legislative nature of ratemaking permits aggrieved ratepayers to challenge rates at any time.

The present proceeding is the first, actual contest of the authority the PSC on RDM electric providers between Enbridge and UPPCo. The December 2009 Order authorized a pilot accounting reconciliation procedure by UPPCo, and affected no rates, but set the stage for implementation of electric rate increases to be charged to Enbridge. Consequently, Enbridge was not aggrieved before the August 2012 Order, but it was the August 2012 Order that electricity rate increases were fixed by UPPCo on Enbridge's accounts via the offending RDM. Since the PSC rejected Enbridge's attempt to resolve its grievance in U-16568, reasoning that

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> brought forward at the time. If the same facts or evidence would sustain both, the two actions are the same for the purpose of res judicata.
>
> **Collateral estoppel** bars relitigation of an issue in a new action arising between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding. In contrast to res judicata, [c]ollateral estoppel conclusively bars only issues actually litigated in the first action.

(Internal quotation marks and citations omitted) (emphasis added).

[66] *Stoll* at 172.

[67] *City of Lansing v Pub Serv Comm*, 330 Mich 608, 612; 48 NW2d 133 (1951).

Enbridge was "not a party" to that case, Enbridge's first opportunity to litigate its grievance as to the RDM increasing Enbridge's electric rates, by right, pursuant to Section 26 of the Railroad Act,[68] in this proceeding.

UPPCo's arguments ignore the impact of the plain factual differences between the present matter and *Dodge*, or *State Treasurer v Larson*, the unpublished authority relying on *Dodge* that UPPCo offered in the Court of Appeals but appears to have abandoned.[69] UPPCo also fails to recognize that the Court of Appeals made no holding regarding *Dodge*, which is Michigan Supreme Court authority, and merely stated the reasons that the factual differences between *Dodge* and the present matter make the PSC's reliance on *Dodge* inapposite.

The Court of Appeals not address *Larson*, but the UPPCo did so in its Court of Appeals briefing. *Larson* is similarly distinguishable. *Larson* involved a felon's attempt to avoid his own promise to pay a portion of his pension to the State. Unlike in *Dodge* and *Larson*, where the plaintiff was **the very party** to the settlement that made the compromise and benefitted, Enbridge was not a party to the settlement approved in the December 2009 Order. This simple distinction, which the PSC and UPPCo would rather not recognize, plainly distinguishes *Dodge* and *Larson* from this matter.

This distinction is important in the PSC context because, as all parties agreed and the Court of Appeals recognized, settlements in rate cases before the PSC purport to bind (if left unchallenged), whether lawful or reasonable or not, third party individual, commercial, and corporate ratepayers. To these public ratepayers, who constitute the utility's customers, the PSC has avowed as a goal that it will "[e]stablish fair and reasonable rates" while "[p]roviding regulatory oversight . . . [, and] while implementing legislative and constitutional

[68] MCL 462.26.

[69] *State Treasurer v Larson*, unpublished *per curiam* opinion, Court of Appeals, August 21, 2011 (Doc. No. 220652). See UPPCo Court of Appeals Brief at 15-17.

requirements."[70] The PSC's duty to the electricity-consuming public is to fix a just and reasonable electric rate by balancing the interests of the consuming public against those of utility investors.[71]

As the Court of Appeals noted in its decision in this case, referencing Indiana Court of Appeals authority,[72] a rate case settlement is **not** merely a contract between only the parties to agree to it (unlike in *Dodge*), which is why such a settlement must be approved by the PSC – the *public service* commission – pursuant to its lawful authority to set just and reasonable rates. If those rates are to be made applicable to all of a utility's customers, the PSC has to perform a function that serves the interests of all of the utilities' customers and does *not* violate clearly established law. Violating clearly established law is exactly what happened in this case: a failure by the PSC to advance its goal of fair and reasonable rates and a failure to meet its duty to fix just and reasonable rates for the ratepaying public. In its decision, the Court of Appeals essentially found *Dodge* inappropriate authority upon which to base approving of a settlement agreement in the regulatory context with an unlawful term that would bind third parties that had not signed the agreement.

UPPCo argues that a necessary impact of the Court of Appeals decision here is that *Dodge* will not apply to any PSC settlement.[73] UPPCo overstates the usefulness of *Dodge* in any context, which is that it determined that private parties should be bound to their agreements, even when there has been an intervening change in the law. The Court of Appeals was correct to find to significant differences in this case from *Dodge* on those facts, and to find it inapposite.

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[70] PSC website, "about the mpsc," Mission and Goals, http://www.michigan.gov/mpsc/0,4639,7-159-16400-40495--,00.html, last accessed November 11, 2014.
[71] See *Detroit v PSC*, 308 Mich 706, 716; 14 NW2d 784 (1944).
[72] *Enbridge*, slip op at 5.
[73] UPPCo's *Application* at 14.

Dodge, a case involving private party settlement agreements, *is* inappropriate authority in the regulatory ratemaking context to support binding third parties in part because *no third parties were bound to the agreement* in *Dodge*. To reach the conclusion that *Dodge* supports binding third parties in the regulatory ratemaking context, the Court of Appeals would essentially have had to extend *Dodge* to settlement agreements involving people that don't sign the agreement, in addition to holding that it is appropriate to bind third parties to *unlawful* agreements that they do not sign. The Court of Appeals did not need to do so to decide the *Enbridge* appeal. In addition to purporting to allow regulated utilities and a few of their customers to assist the PSC to leapfrog the Legislature and extend the PSC's authority beyond its statutory boundaries, such a result would be grossly inconsistent with the policy reasons for holding parties to the settlement agreements that they enter.

There are other distinctions between the facts here and those in *Dodge* which support a ruling in Enbridge's favor and against Appellees. First, unlike here, *Dodge* involved (i) a handful of parties who were all aware of and parties to the settlement of the Dodge estate, (ii) settlement of a dispute between **only** those parties, and (iii) those parties who reached agreement each benefitted from the agreement. And unlike the present case, the settlement in *Dodge* did not affect hundreds, or even thousands, of other individuals or concerns.

As the Court of Appeals also found critical, *Dodge* involved settling a prospective 'disputed issue of law' which was many years later subsequently separately resolved by a court, whereas here there has been no change in the statutory law since its inception in 2008. And here, the PSC had the benefit of the notice and understanding that Court of Appeals had already ruled in April 2012 that the PSC's approval of electrical rates pursuant to RDMs were unlawful. As of August 2012, the question of the PSC's authority to approve of electrical rates pursuant to RDMs was already well-settled, not open to debate, and the PSC was aware of this fact. Furthermore,

the PSC chose **not** to appeal the decision in *Detroit Edison* that fixed that legal authority against the PSC, and the holding of *Detroit Edison* stood without challenge.

The Court of Appeals took the analysis to its logical conclusion as a matter of law, which is that based on the "unmistakably clear" language in MCL 460.1097(4), as the Court of Appeals analyzed in *Detroit Edison*, reasonable minds could not have disputed the limit of the PSC's authority.

UPPCo seems to take the Court of Appeals holding to mean that, as a factual matter, all of the parties and attorneys that advocated that MCL 460.6 and *Dodge* authorized the PSC to approve an RDM for an electric utility, such as in *Detroit Edison*, were not involved in an "honest dispute" about the state of the law and were themselves unreasonable in some fashion.[74] This takes the Court of Appeals decision in this matter too far, and is just not the case. Stepping back, alleged facts regarding the subjective beliefs of litigants and their counsel which are not part of the record in this case are not any basis to dislodge the narrow holding that the Court of Appeals issued as a matter of law regarding the PSC's conduct exceeding its legal authority in August 2012. The PSC's apparent takeaway about the implications to the *Detroit Edison* litigants and their legal counsel takes unnecessary liberty with the meaning and extent of the Court of Appeals decision in this case, for two reasons.

First, the Court of Appeals did not directly comment on the reasonableness of the position that those advocating for RDMs for electric utilities took in the litigation that resulted in the *Detroit Edison* decision. The *Detroit Edison* dispute involved an argument by advocates for the utility, and others, that the broad, general statutory authority to set rates without any specific formula, found in MCL 460.6, provided a basis for the electric utility to establish and implement an RDM even though the specific statutory provision that discussed and set forth the authority of

[74] UPPCo *Application* at 10-11.

the PSC concerning RDMs for electric providers, MCL 460.1097(4), did not. There was, in essence, no dispute over the meaning of MCL 460.1097(4), and could not be, since under Michigan law, a utility does not gain authority by implication, and a doubtful power does not exist. As such, the fact that those advocates and litigants chose to take the position that a general statute provided authority that a more specific statute did not authorize was simply an unsuccessful argument, or perhaps an error, tactical, legal, or otherwise.

Second, the Court of Appeals decided this case as a matter of law on the facts presented and the applicable statutory law. It held that a reading of the plain language in the applicable statute that speaks about RDMs for electric utilities – MCL 460.1097(4) – in context with the statutory scheme, which includes the contrasting authority for gas utilities in MCL 460.1098(6), requires the conclusion that reasonable minds reviewing that statute could not have differed about the conclusion that *that* statute did not authorize the PSC to approve a settlement agreement with an RDM for electric provider in 2009, or at any time after 2008.

Put another way, the Court of Appeals simply decided this matter on the specific statutory provision that mattered in this case, MCL 460.1097(4). It is axiomatic that the more specific statute governs over the more general statute. MCL 460.1097(4) is more specific than MCL 460.6, which provides more broad, general ratemaking authority to the PSC. Therefore, MCL 460.1097(4) controls, because it is more specific on the topic of RDMs for electric providers than MCL 460.6.

C. The Court of Appeals Decision is Consistent with this Court's Jurisprudence.

It is a matter of well-settled law that contracts in violation of law are unenforceable as against public policy,[75] and there is no exception to that rule for settlement agreements, or settlement agreements in the regulatory context. Parties are incapable of binding each other to unlawful settlement agreements, and the PSC's approval for a settlement agreement with an RDM for an electric provider was clearly an error. The Court of Appeals agreed.

D. The Opposite Result Here Would Allow Regulatory Agencies to Unlawfully Expand Their Reach by Settlement Agreement.

In summary, the Legislature did not confer authority upon the PSC to approve or direct the use of an RDM for electric providers. The PSC approved RDMs for other electric providers and those decisions were challenged in the Court of Appeals. In *Detroit Edison*, the Court of Appeals held that the PSC had no authority to approve or direct the use of RDMs before the PSC approved new rates to be paid by customers to implement an RDM for UPPCo. The PSC then sought to avoid the Court of Appeals decision and the intent of the Legislature by finding that the PSC Staff and UPPCo could by themselves and with three (3) interveners, agree to an RDM and that the PSC was obligated to implement an RDM even though the Court of Appeals determined that the PSC had no authority to approve or direct the use of an RDM for electric utilities. The PSC decided that it had the power and authority to approve an RDM for UPPCo even though no such authority was conferred upon it by the Legislature, and the Court of Appeals had already expressly ruled as much in *Detroit Edison*. Under the PSC's rationale, if the parties agreed to a settlement agreement which required industrial customers to pay, by way of example, 90% of the costs of residential customers, then even though MCL 460.11(1) requires that rates be set at the

[75] See *Sternamen v Metropolitan Life Ins Co*, 52 N.E. 763, 764 (NY 1902) ("The power to contract is not unlimited. While as a general rule there is the utmost freedom of action in this regard, some restrictions are placed upon the right by legislation, by public policy and by the nature of things. Parties cannot make a binding contract in violation of law or of public policy.")

cost serving each particular class, the PSC would be duty-bound to approve the settlement agreement even though the Legislature had expressly stated that such a result was unlawful. The PSC's "bottom up" approach simply ignores and defies the concept that the Legislature is the only body that can confer authority upon the PSC to regulate rates and the terms and conditions of utility service.

For the foregoing reasons, Enbridge's Motion for Summary Disposition should have been granted by the PSC, and the Court of Appeals was correct to hold that the PSC erred by approving the RDM and dismissing Enbridge's Formal Complaint. The rates that the PSC approved for UPPCo's RDM in the August 2012 Order were approved without lawful authority to do so. As such, those rates paid by Enbridge related to the RDM approved in the August 2012 Order are, by definition, unlawful, unjust, and unreasonable.

As Enbridge argued in the Court of Appeals, if the Court of Appeals reached the opposite result, and chose giving effect to a settlement agreement involving an unlawful term over giving effect to clear statutory language expressed by the Legislature, the effect would be to grant regulatory agencies a 'blank check' to expand the edges of their authority under guise of approving settlement agreements where there was a supposed doubt about the state of the law.

Such a result would not only violate core principles of statutory interpretation, but would allow a limited number of unelected, private parties to effectively change Michigan law by authorizing the expansion of regulatory agency action through 'settlement' in contravention of the constitutional mandates which the legislative process serves. This Court should not disturb the sound decision of the Court of Appeals, and should decline to grant leave to appeal.

III. The "Sky is Not Falling" for Settlement Agreements in Administrative Proceedings, and UPPCo Has Not Shown Sufficient Reason for the Court to Grant its *Application*.

UPPCo's *Application* argues that the Court of Appeals decision below create a hostile environment for settlement of litigation in contested case proceedings before the PSC and limit the doctrine associated with *Dodge* to allow collateral attacks on settlement agreements.[76] UPPCo urges this Court to grant leave to appeal based on these arguments. For the reasons set forth below, the PSC's arguments offer an insufficient basis to require this Court to hear this case, because those arguments to not meet the requirements of one or more of MCR 7.305(B)(2),[77] (3), or (5), and the Court should decline UPPCo's invitation to hear this appeal.

Even if the requirements of one or more of the subrules in MCR 7.305(B) were met in this case, this Court should decline to grant leave to appeal, because the Court of Appeals decided this case correctly. To disturb the Court of Appeals decision here and find in favor of the Commission and UPPCo would give effect to a settlement agreement by private parties that would allow the PSC to unlawfully expand its ratemaking authority. The Court of Appeals decided this matter correctly by giving effect to the unmistakably clear language used by the Legislature in the subject statute, so leave should be denied.

A. The Court of Appeal Decision Will Direct Future Litigants in Administrative Proceedings to Take Care that They Do Not Reach an Agreement Outside the Authority of the Administrative Agency to Allow.

UPPCo's *Application* argues that the Court of Appeals decision creates a "hostile environment" for settlement agreements in cases before the PSC.[78] The basis for the UPPCo's conclusion is that it views the Court of Appeals decision as undermining the state's strong public

[76] UPPCo's *Application* at 18-20.
[77] Enbridge does not dispute that this case is involves a "state…agenc[y]" within the meaning of MCR 7.305(B)(2). However, that fact is only one of the two components of that subrule, and Enbridge contends that the other component ("significant public interest") is not present here.
[78] UPPCo's *Application* at 18.

policy favoring settlement agreements and limiting *Dodge*, even in administrative proceedings, particularly the language wherein the Court of Appeals offered its reasoning that *Dodge* is inapposite because the facts of *Dodge* make it different than the situation here, meaning that the strong public policy favoring settlement is not advanced when a settlement affects countless others that were not a party to the agreement.[79] Enbridge disagrees, because the Court of Appeals opinion below is only fairly read as having a single narrow holding based on statutory interpretation. *Dodge* is undisturbed. The Court of Appeals simply declined to extend *Dodge* beyond its facts. *Dodge* and the state's jurisprudence and strong public policy favoring settlement remain good law.

When read properly, and only giving effect to the language used by the Court of Appeals in its published decision, the effect of the Court of Appeals decision in this matter will simply remind litigants in administrative proceedings, as well as those agencies, that their settlement agreements need to contain terms which respect the Legislature's delegation of authority to the agency in question, and do not 'press the envelope' toward an unlawful expansion of authority. This appellate direction should not be news to any litigant that appreciates the limited nature of the authority that an administrative agency possesses as a matter of law. This direction also is entirely consistent with the function of an administrative agency, the public interests in play when an agency exercises its authority, and Michigan jurisprudence.

[79] UPPCo's *Application* at 18-20.

1. The Holding in *Enbridge* is Narrow, and the Court of Appeals's Determination that the PSC's Reliance on *Dodge* was Misplaced Because *Dodge* is Inapposite Does Not Constitute Sufficient Effect on the Public Interest for this Court to Grant the *Application*, Because Not Every PSC Case Needs to Be Heard by the Michigan Supreme Court.

UPPCo argues that the statements by the Court of Appeals, essentially distinguishing *Dodge* from the facts of the present matter, constitute a significant enough effect on the public interest in settlements within the meaning of MCR 2.305(B)(2) to meet the requirement of that subrule and allow its *Application* to be granted. Enbridge disagrees.

First, the Court of Appeals decision below constitutes a single legal holding interpreting a single specific statute governing the authority of an administrative agency, based on sound interpretive principles for determining the intent of the Legislature. In this regard, the holding and effect of the *Enbridge* decision are limited.

Second, the Court of Appeals took no action which diminishes the meaning of *Dodge*. The Court of Appeals simply provided two reasons that *Dodge* does not apply, and the PSC's reliance on *Dodge* for its decision to implement an RDM for electric providers via a prior settlement agreement was an error. *Dodge* remains good law. The Court of Appeals decision here did nothing to diminish the importance of *Dodge*, or the strong public policy expressed in Michigan jurisprudence and cited by the PSC in its *Application* as favoring settlement of litigation. The Court of Appeals decision paid respect to that jurisprudence, acknowledging "the strong public policy behind the long-standing doctrine that requires people to be bound by their settlements." *Enbridge*, slip op at 5.

One implication of the Court of Appeals decision here is simply that *Dodge* is not the correct legal basis upon which the PSC should rely to hold litigants and non-litigants alike in administrative proceedings to ratemaking settlement agreements.

Another implication is that *Dodge* is not the correct legal basis for the PSC to implement settlement agreements with illegal terms. This implication simply serves as a reminder that administrative agencies like the PSC are limited by the authority granted by the legislature. And since, under this Court's jurisprudence, see *Consumers Power Co*, *supra*,[80] a doubtful power does not exist, the PSC should take a less cavalier approach to its interpretation of its statutory authority.

Based on the Court of Appeals decision in this case, a more conservative approach by the PSC is warranted to its interpretation of its own statutory authority, because of the critical implications of those interpretations for regulated entities such as UPPCo and its customers, who need to be able to rely on the ratemaking settlements that allow them to order their business and personal affairs. Because of the PSC's errant decision in 2012, it has put UPPCo in the position of potentially needing to refund hundreds of thousands of dollars in illegal overcharges for electric rates some or all of its approximately 54,000 customers. The PSC's decision in 2012 also failed customers like Enbridge, which have been saddled with illegal RDM charges for over three years. The Court of Appeals in its decision in the instant case corrected an errant interpretation of the PSC, and is not worth disturbing.

The third reason that the requirements of MCR 7.305(B)(2) are not present here is one of practicality. The Michigan Supreme Court cannot be expected to hear every appeal involving the PSC. Obviously, the PSC is the agency charged with regulating electricity rates for every single Michigan resident, small business, large manufacturing business, other commercial or public business concern, and every regulated utility and alternate energy supplier. It is equally obvious that the interests of all these ratepayers and electricity providers are "public" in the

[80] *Union Carbide, Corp.*, 431 Mich at 146; *Consumers Power Co v Pub Serv Comm*, 460 Mich 148, 155-159; 596 NW2d 126 (1999).

broadest and most straightforward sense. But UPPCo needs to show more than that a "public interest" is implicated to meet the requirements of MCR 7.305(B)(2), because if all the PSC or a litigant before the PSC needed to show was that the issue affected the PSC, then MCR 7.305(B)(2) would be met in every application for leave to appeal involving the PSC.

Even if it were the case that every single case involving an appeal of a PSC decision met the requirements of MCR 7.305(B)(2), then this Court could still decline to hear the case if the Court of Appeals correctly decided the issue. In this case, the Court of Appeals correctly decided the narrow, legal, statutory interpretation presented for decision. Therefore, even assuming that the PSC's *Application* showed that the requirements of MCR 7.305(B)(2) were met here, this Court should decline to hear the case, because the Court of Appeals decided this matter correctly.

2. The Significance of the *Enbridge* Decision is Not "Major" Because it Does Nothing to Detract from the Pro-Settlement Jurisprudence.

MCR 7.305(B)(3) requires that an issue be of "major significance to the state's jurisdiction" to be a basis for granting an application for leave to appeal.

UPPCo argues that MCR 7.305(B)(3) is met because it claims that the Court of Appeals decision is "jurisprudentially significant" because it allegedly "creates new limitations on the long-standing legal doctrine recognized by this Court in *Dodge*."[81] Here again, as noted above, the UPPCo reads the narrow legal holding and decision of the Court of Appeals far too broadly. When read for its terms, the Court of Appeals decision below does nothing to detract from the pro-settlement jurisprudence present in Michigan law, and is therefore not of "major" significance to the state's jurisprudence. It further did nothing to change the facts or holding of *Dodge* or any jurisprudence that flowed from *Dodge*. The decision by the Court of Appeals

[81] UPPCo's *Application* at 20.

merely reasoned that *Dodge* does not advance pro-settlement policy for binding third parties to agreements that they did not sign in regulatory ratemaking proceedings, which are proceedings that necessarily require binding third parties that do not sign the settlement agreements.

No one disputes that settlement agreements in proceedings before the PSC are necessarily intended to bind all of the affected ratepayers. As alluded to by at least one of the advocates at oral argument before the Court of Appeals, for example, it would be impractical to join every one of the approximately 54,000 customers for UPPCo to a contested electric ratemaking proceeding before the PSC and plainly impossible to get them all to agree to increased electric rates. Given this reality, with which UPPCo apparently agrees, and the necessities involved in pursuing efficient regulatory electric ratemaking by the PSC, settlement agreements in contested proceedings necessarily bind all ratepayers – as long as those settlements to not include terms that exceed the plain language of the statutory authority of the PSC or do not otherwise fail the PSC's mandate to set just and reasonable rates.

The basis offered by UPPCo to meet the requirement of MCR 7.305(B)(3) is not sufficient to show that the "major" significance requirement of that subrule is present here. As such, this Court should deny the Application. Even if MCR 7.305(B)(3)'s requirement were met by the basis offered by the PSC, then the Court should deny the *Application* on the basis that the Court of Appeals correctly decided this the sole legal issue present in this case.

3. The Court of Appeals's Decision Here is Correct, Will Cause No Injustice When Read and Applied By Its Terms, and Is Consistent With Binding Precedent.

UPPCo argues that the Court of Appeals's decision below was clearly erroneous because the two bases offered by the Court of Appeals for declining to find *Dodge* applicable, and

disagreeing with the PSC on that point, are clear error and will cause "manifest" injustice.[82] As noted above, there is no dispute that settlement agreements in contested proceedings before the PSC must bind third parties. The Court of Appeals decision merely reasoned that *Dodge* was not the basis to uphold those settlement agreements. *Dodge* does not offer a basis to uphold a settlement agreement in a contested ratemaking proceeding to bind anyone, much less third parties, to terms that exceed the statutory authority of the PSC, as we have in this case, where the PSC approved an illegal RDM for an electric provider. To the contrary, the Court of Appeals decision was correct, because it decided a narrow legal issue by interpreting the plain language of the statute that limited the PSC's authority as a matter of law. Since the Court of Appeals was correct, any injustice to UPPCo and the three parties that negotiated the settlement agreement will be limited to those parties, who themselves consented to the RDM.[83]

Even if the Court of Appeals decision were "clearly erroneous," the decision will not cause injustice meeting the "material" standard applicable here. First, UPPCo and the three parties beyond the PSC Staff that negotiated the settlement agreement are sophisticated commercial concerns. It was unreasonable, as a matter of law, for them to conclude that they could authorize the PSC through a settlement agreement to exceed its own authority, particularly by the time and after *Detroit Edison* was decided in 2012. Any injustice will be limited to those four private business concerns who consented as between them to a settlement to which they

[82] UPPCo's *Application* at 8. Enbridge notes that "manifest" injustice is not required to meet MCR 7.305(B)(5)(a), but "material injustice" is instead required.

[83] It is unclear whether those three parties will still be bound by the Settlement Agreement with the unlawful RDM, since they did sign the agreement and privately agreed to be bound. They may have an argument that UPPCo cannot enforce the settlement agreement against them, since it was unlawful, and, as the Court of Appeals stated, implementation of the agreement to raise electrical rates was an "ultra vires" act. However, that issue does not appear to be before the Court in this matter.

were not required to be bound but for their own consent. *Dodge* might serve as a basis to bind those parties, but that would be a just result, consistent with Michigan law.

Second, UPPCo claims that "manifest" injustice would result because interested parties would be invited to retroactively attack regulatory ratemaking settlement agreements after essentially 'waiting in the weeds' to see whether they disagree with the settlement result.[84] However, the rates must be just and reasonable. Any customer at any time may challenge unjustnenss and reasonableness of electric rates. No unjustness results from this tenet of Michigan law

The increased electrical rates based on the RDM in this case were unlawful. In this regard, the PSC in 2012 failed to meet its mandate to set just, lawful, reasonable electric rates. As discussed above, ratemaking is a prospective, legislative function for which impacts are generally forward-looking. For example, whenever a utility files a new application seeking a rate increase, no one in any real sense would argue that such an application is a collateral attack on the previous PSC order that approved the current rates. Instead, it is properly viewed as a utility stating that the current rates are no longer just and reasonable and need to be increased. Similarly, when a customer believes that rates are too high and should be lowered, as Enbridge did here even before the rate increases went into effect, it, too, may file a case seeking to have the rates reduced because the rates are now unjust and unreasonable. In a ratemaking context, there is no need for any collateral attacks on rate orders or Commission settlements approving rates. Rates can always change.

Here, before the PSC, Enbridge argued that its formal complaint met the requirements of a complaint before the PSC under the applicable pleading rules. The PSC found moot its Staff and UPPCo's argments to the contrary, and allowed Enbridge to proceed in the instant case. The

[84] UPPCo's *Application* at 16.

PSC ultimately ruled against Enbridge, and dismissed the complaint. According to the Court of Appeals, agreeing with Enbridge's complaint, the RDM was unjust and unreasonable because the statute was clear, and the Court of Appeals resolved any lack of clarity in April 2012 in a binding, published opinion, well before the PSC increased rates using the RDM. Thus, the correct course of action by the PSC should have been to grant Enbridge its relief, as the Court of Appeals concluded.

There was perhaps only a small need for the Court of Appeals to even mention *Dodge*: to explain the reason for the PSC's errant reliance on *Dodge*. The reactions by UPPCo, and the PSC in its own *Application for Leave to Appeal* in Supreme Court No. 153118, with concerns about settlement certainty and collateral attacks, may illustrate this point. However, when properly read by its terms, the Court of Appeals decision here was narrow and correct. When read for the carefully worded, narrow legal holding that it is, the Court of Appeals decision here should not provide a basis for collateral attack on settlement agreements that are limited to the lawful authority of the PSC or any other administrative agency charged with a regulatory function.

For these reasons, the Court of Appeals decision is consistent with Michigan law, and the requirements of MCR 7.305(B) are not present. Even if they were present, the Court of Appeals decided this matter correctly, so leave should be denied.

B. *Dodge* Remains Good Law on its Facts, and the Motivation for Parties to Enter Settlement Agreements in Cases Involving Doubts About the State of the Law Will Remain.

UPPCo's *Application* argues that the Court of Appeals decision below will create limitations on *Dodge* and adversely impact motivation and advantages to resolving disputed legal

issues by settlement and reduce the efficacy of settlements. [85] This argument affords UPPCo no further basis to suggest that one or more of the subparts of MCR 7.305(B) are met.

Contrary to UPPCo's arguments, when read by its terms, the Court of Appeals decision in *Enbridge* does nothing to affect *Dodge* except to state in part that *Dodge*, a case involving binding parties that sign a settlement agreement to their promise, does not apply because *Dodge* did not involve binding third parties to settlement agreements. By drawing a distinction between this case and the *Dodge*, and merely declining to apply *Dodge*, the Court of Appeals did nothing to discourage settlement where there is a doubt about what the law is.

UPPCo argues that the public interest in promoting settlement, and the alleged "hostile environment" created by the Court of Appeals decision in *Enbridge*, establishes that MCR 7.305(B)(2) is satisfied. UPPCo offers no further basis for the alleged, prospective, as-yet-to-mature disincentive for settlement of litigation where honest doubts about the state of the law exist and litigation can be resolved by settlement. Unstated by UPPCo is that litigation will remain expensive, regardless of the *Enbridge* decision. As such, UPPCo offers no further basis to suggest that an issue presented by this appeal is of significant public interest, "major" significance to the state's jurisprudence, clearly erroneous and causing material injustice, or that *Enbridge* conflicts with Michigan law. And even if one or more of the subparts of MCR 7.305(B) were present, this Court should decline to hear this appeal because the Court of Appeals decided this matter correctly.

[85] UPPCo's *Application* at 17-18.

CONCLUSION AND REQUESTED RELIEF

Plaintiff-Appellee Enbridge Energy, Limited Partnership respectfully requests that Defendant-Appellant Upper Peninsula Power Company's *Application for Leave to Appeal* be denied.

Respectfully submitted,

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Dated: March 1, 2016

STATE OF MICHIGAN

IN THE SUPREME COURT

In Re Complaint of Enbridge Energy, Limited Partnership against Upper Peninsula Power Company,

UPPER PENINSULA POWER COMPANY,

Appellant,

vs.

ENBRIDGE ENERGY, LIMITED PARTNERSHIP,

Appellee,

and MICHIGAN PUBLIC SERVICE COMMISSION,

Defendant-Appellee,

/

Supreme Court No. 153116

Court of Appeals No. 321946

MPSC Case No. U-17077

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COUNTY OF INGHAM)

The undersigned, being first duly sworn, deposes and says that on the 1st day of March, 2016, she served a copy of Answer and Brief of Enbridge Energy, Limited Partnership in Opposition to Upper Peninsula Power Company's Application for Leave to Appeal upon:

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by enclosing copies of the documents and depositing same in the U.S. Mail and filing them with the Court's efiling system.

/s/ Deborah A. Anderson
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